

Army Response to Consultation Meeting Comments and Submitted Written PA comments

From	Letter Corresponds to Meeting Notes	26 Feb 09 Consultation Meeting	Army Response
William Aila	A	Asked who else was invited to the meeting	All consulting parties were invited who were on the initial consultation list, totally 16 parties.
David Henkin and OHA	B	Need more time for review, some individuals did not received PA until 14 Feb The March 4 deadline was not adequate time.	Deadline was extended to March 11.
DH	C	Previous comments provided on previous versions of the PA were not incorporated into the document	USAG-HI incorporated those comments they believed were relevant to the Section 106 process. For this version the Garrison is providing documentation of its comment consideration through this response document.
SHPD and William Aila	D	Part of the PA should be mitigation of the impacts of the activity. The only provision for mitigation is on the last page of Appendix G where if there is damage, the Army Cultural Resources Manager will notify SHPD and talk to them about it without input from the community.	The newly revised PA is designed to minimize adverse effects by avoiding historic properties through stipulations 3b(1). In addition, it contains a process for handling discoveries and potential adverse effects (Stipulation 5), leading in consultation to resolution of adverse effects 3d(3).
William Aila	E	Indicated he had witnessed rounds going outside the training area and the need for the PA to address this.	The Army has revised the PA to read under Stipulation 3c (1) and (2): <u>Training Activities</u> : (1) Garrison training personnel will maintain a record of all artillery and mortar rounds that do not land within the designated impact area. (2) For unexploded munitions that land outside the designated impact area, the Garrison will identify whether and how the munitions were disposed of. Further details of handling Unexploded Ordnance (UXO) are covered in Stipulation 4.f.
David Henkin	F	Because of the presence of unexploded ordnance (UXO), the Army did not go into those areas to inspect to see if there was any	Stipulation 3d (4) now reads, <i>The Garrison will monitor only in areas determined safe to proceed at the time of monitoring by the Safety Officer. Additionally, there will</i>

		<p>damage. Mr. Henkin emphasized there is the potential for damage to sites. The only provision for mitigation is on the last page of Appendix G where if there is damage, the Army Cultural Resources Manager will notify SHPD and talk to them about it without input from the community.</p>	<p><i>be no monitoring conducted in terrain that is unsafe for general monitoring or outside the South Fire Break Road except in areas cleared of UXO (Appendix H).</i></p> <p>The newly revised PA is designed to minimize adverse effects by avoiding historic properties through stipulations 3b(1). In addition, it contains a process for handling discoveries (Stipulation 5) and potential adverse effects, leading in consultation to resolution of adverse effects 3d(3).</p>
Multiple	G	<p>Issues concerns training observations and post-training monitoring of sites, and a inconsistencies between the 2001 Settlement Agreement (SA) and the PA.</p>	<p>The Army contends that it is not practical to conduct monitoring after each live-fire training exercise nor is it appropriate for non military personnel or contractors to enter the range for security reasons and health and safety concerns. This PA does not address the 2001 SA agreement, nor does it supersede it as now stated in the 8th WHEREAS clause: <i>WHEREAS, this PA will not supersede any legal agreements including, but not limited to the 2001 Settlement Agreement between Malama Makua and the Army.</i></p> <p>Monitoring is expanded to: 3d(1)and (2). Post-training activities:</p> <p><i>(1) The Garrison will monitor historic properties within the South Fire Break Road in accordance with Appendix G, Archaeological Site Monitoring Plan. The Monitoring Plan will be carried out by personnel from the Garrison Cultural Resource Program. The monitoring will take place initially every month for the first four months after live fire training commences and then subsequently every two months at appropriate intervals between live fire exercises to assess the effectiveness of the site protection measures and any effects to known or new historic properties. After the first 16 months of live fire training, the Garrison will</i></p>

			<p><i>perform monitoring on a quarterly basis.</i></p> <p><i>(2) The Garrison will provide round out-of-impact area logs and monitoring reports to SHPO and all consulting parties within 21 days of the monitoring schedule reflected in Stipulation 3d(1). In addition, the Garrison will submit monitoring records, round out-of-impact area logs, fire response activities and photographic documentation in each annual reporting in accordance with Stipulation 10.</i></p> <p><i>(3) Whereupon completion of monitoring, the monitor(s) have identified effects to potential historic properties, the CRM shall initiate consultation with consulting parties to determine NRHP eligibility of the property and determine any effects to the values that define the property's significance. If the effects to the historic property are adverse, USAG-HI will proceed by following 36 CFR Part 800.6 to resolve any adverse effects.</i></p> <p><i>(4) The Garrison will monitor only in areas determined safe to proceed at the time of monitoring by the Safety Officer. Additionally, there will be no monitoring conducted in terrain that is unsafe for general monitoring or outside the South Fire Break Road except in areas cleared of UXO.</i></p>
S. Rodrigues	H	Requested that definitions and terms be included in the PA.	Army is not clear about what terms need to be defined. All acronyms are explained and Section 106 terms are defined within the regulation (36 CFR Part 800.16).
David Henkin	I	Mr. Henkin expressed concerns with stipulation 5 where it says "if appropriate" after a discovery the Army would contact SHPO, OHA, and Native Hawaii Organizations (NHOs). He said contact should be automatic not left up to the discretion of the Army. If it is not a routine	Refer to amended Stipulation 5. <u>Discoveries</u> . <i>In the event that discoveries of cultural resources are made within the APE, the activity activities related to construction or excavation in the vicinity of the discovery shall cease and the Range Officer will immediately be notified by telephone. Upon notification, the Range Officer will immediately inform</i>

		occurrence, when it does happen, it should trigger a consultation. The Army needs to reconcile body of PA with Appendix G to ensure all the consulting NHOs were notified of any discovery.	<i>the CRM by telephone or email. The CRM will investigate the discovery. If the CRM determines the discovery may be a cultural, contact the SHPO, the Office of Hawaiian Affairs, and consulting Native Hawaiian organizations and groups in accordance with 36 CFR Part 800.13(b) and 800.4(c)(2). Archeological resources identified through discovery situations will be evaluated by the CRM pursuant to criteria found in 36 CFR Part 60.4 and in consultation with the SHPO, Native Hawaiian organizations and other consulting parties. Any disagreement over the eligibility of a discovered cultural resource shall follow the process in 36 CFR Part 800.4(c)(2). Additionally, any discoveries made will be treated subject to applicable laws and federal regulations.</i>
A. Greenwood	J	Will there be another opportunity for other folks who did not attend the meeting to get involved	SHPD and Army stated that this would be the only meeting and all consulting parties were invited to attend. The Army believes it has sufficient information to take into account the magnitude of the undertaking and the nature of its effects on historic properties. The Army believes it has consulted in good faith and considered the views of the consulting parties and made a reasonable and good faith effort to accommodate and incorporate comments within operational constraints.
William Aila	K	Mr. Aila questioned what would happen if there is a discovery but the cultural resource is not potentially eligible for the National Register.	See revised Stipulation 5 for Discovery clause as mentioned above in I.
A. Greenwood	L	Ms. Greenwood had questions on determining consulting parties and who represents the party.	The Army maintains a consulting parties list in consultation with the SHPO. The Army consults with the burial councils, the community and sends out letters. Parties who wish to remain on the list are notified every time there is a consultation. There are different lists for every range and installation that have been formulated over the years in efforts to determine who is interested.

			When the Army hears of new interested parties, it adds those people to the consultation list.
OHA	M	<p>Mr. Lindsey had a question on paragraph 3.c.3, Post Training—are there areas that pose a threat to human health and safety and are areas containing UXO defined? Mr. Henkin suggested that there be a map that shows areas where monitoring could take place and that there should be an obligation to clear areas of hazards so more sites can be monitored—part of the undertaking should be increasing the ability to monitor.</p> <p>Ms. McMahon asked if the Army has condition status of the 121 sites in the APE. Ms. McMahon also asked, what is the potential for finding additional sites in the APE?</p> <p>Ms. McMahon said that on Kahoolawe they put protective measures around sites that could be impacted. Ms. McMahon noted that it should be mentioned in the PA and in doing so it might add some assurances that the Army is checking on the sites and will provide protective measures should the training go into those areas.</p>	<p>Army has included maps (see new Appendices indicating areas of known UXO and dangerous terrain.</p> <p>The APE is not 100% surveyed, however the Army's use of remote sensing using satellite imagery has been ground-truthed after the 2003 burn and obtained almost a perfect correlation for large complexes.</p> <p>In reference to protection of sites, Army has amended Stipulation 3b(1): <i>The Garrison will mark the boundaries of all known historic properties in areas currently used for training with Seibert stakes. These stakes shall establish a buffer zone of no less than 15-20 meters from the exterior boundary of a historic property. Garrison will consult with SHPO and consulting parties regarding appropriate protective measures for sites within the South Fire Break Road. Military personnel will use multiple safety checks to ensure protection of historic properties. The Garrison will report these efforts pursuant to Stipulation 10.</i></p>
David Henkin/S. Rodrigues	N	Mr. Henkin noted that Malama Makua was happy to see in 3.b., Pre-training Activities, listed protective measures. He said it is a positive move forward; however it was unclear where sites were located, i.e. within the Company Combined Arms Assault Course or the SDZs.	See response in "M" above.
Multiple	O	Comment concerns qualifications of the staff under stipulation 1(b)	The Army has revised stipulation 1b, which now reads, <i>The Garrison will ensure that the treatment actions</i>

			<p><i>undertaken pursuant to this PA are performed by or under the direct supervision of the Garrison Cultural Resources Manager (CRM) and in consultation with a person having a minimum of 1 year experience in Hawaiian Archeology as well as familiarity with Native Hawaiian culture.</i></p> <p>Additionally, the Army has included a role for community members to assist in the development of training programs pursuant to stipulation 3b(4): <i>Together and within 8 months of the execution of this PA, the Garrison and experts from the community identified by the consulting parties, if available, will update cultural awareness training programs for monitors, contractors and military personnel, which will include: grass cutters, maintenance, range personnel, military personnel, trainers and other parties.</i></p>
David Henkin	P.2	Whereas Clauses - The last "Whereas Clause" that has to do with the identification of historic properties--Malama Makua cannot sign on to this PA with this clause in regards to the level of identifications that have been completed. There are on-going disputes on the adequacy of surface and subsurface surveys. The 2000 PA addresses the need to do additional surveys. The PA should require additional clearance to permit additional monitoring within the APE.	<p>The 2000 PA does not require additional surveys. It suggests other methods of identifying historic properties such as satellite imagery, which the Army has done. The PA provides for an ability to carry-out additional evaluations as funds become available. The Army maintains that it has carried out identification of historic properties in accordance with the regulations per 36 CFR Part 800.4 which does not require 100% survey but instead requires the Agency to make a reasonable and good faith effort to carry out its identification efforts through background research, consultation, sample field investigation, and field survey and take into account past studies, etc.</p> <p>To clarify, the Army has revised the 6th and 7th WHEREAS' in the PA to read: <i>WHEREAS, the identification of historic properties in the APE for routine training at MMR have occurred through pedestrian survey, subsurface testing, and a survey of traditional religious and cultural properties survey as documented</i></p>

			<p><i>in Appendices D and E (showing survey) in all areas that do not present a threat to human health and safety pursuant to 36 CFR Part 800.4; and determined that all known and future sites will be treated as eligible for inclusion in the National Register of Historic Places (NRHP) until a formal evaluation determines otherwise; and</i></p> <p><i>WHEREAS, 121 historic properties listed in Appendix F and shown in Appendix B were identified within the APE; and</i></p>
David Henkin	P.3	Stipulation 1.a. Has major concern with the definition of the activity/undertaking as being training as long as “it is not of greater magnitude” than that defined in Appendix A. Mr. Henkin said the Supplemental Draft EIS defines training specifically. Malama Makua would prefer if Army sought a lesser level of activity to minimize potential impacts historic properties.	Appendix A covers all the training activities covered in the Draft Makua EIS, which would be undertaken at Makua. The Army has revised Stipulation 1(a). according to suggested changes by Malama Makua/EarthJustice, to now read: <i>Should any activity within the APE be proposed that differs from the activities described Appendix A or Stipulation 3, the Garrison shall consult on such undertakings on a case-by-case basis pursuant to Section 106 of the NHPA, as they fall outside the scope of this PA, or seek amendment of the PA pursuant to Stipulation 6 to bring the activity within the scope of this PA.</i>
David Henkin	P.4	Stipulation 2.a. – Concerning the statement that further identification and evaluation may occur. The PA should require on-going efforts to do additional site identification and UXO clearance	The USAG-HI plans to clear UXO in accordance with the 2001 SA conditions, and not through this PA.
David Henkin	P.5	Stipulation 2.b. - Missing the word “Part” in front of 800 in this stipulation.	Corrected
David Henkin	P.6	P. 6 - Stipulation 3.a. – Malama Makua could not sign an agreement that says the Garrison would continue to take all reasonable measures to protect historic properties as they do not believe the Army has done it in the past.	The Army has revised stipulation 3.b to cover several measures of protection as stated under “M” above.

. SHPD	P.7	Stipulation 3.b.(1) – Need to ensure that protective measures can be removed to avoid interference with cultural access and site monitoring. Also, the PA needs to specify the areas where site protection measures would be required. Malama Makua's view is that it would be all sites within the SDZs of the weapons that would be fired under the different training scenarios.	The Army will consult about appropriate site protection measures and has amended the PA as stated in "M" above.
David Henkin	P.8	Stipulation 3.b.(2) – Concerned that only the new range target areas would be placed to avoid impacts to historic properties. Concerned why there is not an evaluation of realignment of existing targets that would pose threats to historic properties	<p>Stipulation 3b(2) is amended as follows: <i>The Garrison, when placing target objectives and training aids in new locations, will ensure avoidance of historic properties. When placing new targets and training aids without ground disturbance, for example portable containers and mockup targets, a cultural resources staff member will accompany the range personnel to ensure avoidance of historic properties. The Garrison will report on these new locations pursuant to Stipulation 10.</i></p> <p>And Stipulation 3b(3) to: When placement of new targets requires ground disturbance, the Garrison will request an expedited review by consulting parties with a 7 day notification about the location.</p> <p>Replacement of existing targets is exempt if determined by the CRM that the location of the target is not within the boundaries of a known historic property per Stipulation 4.d, as the replacement would have no potential to affect historic properties.</p>
Multiple	P.9	3.b.3 Unclear which Army personnel would be covered by this . Needs to be periodic training of all personnel – grass cutters definitely need to be covered. Concern about lack of native Hawaiian input into training	PA has been amended to the following: Stipulation 3b(4): <i>Together and within 8 months of the execution of this PA, the Garrison and experts from the community identified by the consulting parties, if available, will update cultural awareness training programs for monitors, contractors and military personnel, which will include: grass cutters,</i>

			<i>maintenance, range personnel, military personnel, trainers and other parties.</i>
David Henkin	P.10	3.c Monitoring If monitoring is only done every three months, there is no way of assessing which exercise and what activity may have caused damage. Frequency of monitoring should be after every live fire training exercise and include Malama Makua.	Previously discussed under “G” above, per stipulation 3d(1): <i>The Garrison will monitor historic properties within the South Fire Break Road in accordance with Appendix G, Archaeological Site Monitoring Plan. The Monitoring Plan will be carried out by personnel from the Garrison Cultural Resource Program. The monitoring will take place initially every month for the first four months after live fire training commences and then subsequently every two months at appropriate intervals between live fire exercises to assess the effectiveness of the site protection measures and any effects to known or new historic properties. After the first 16 months of live fire training, the Garrison will perform monitoring on a quarterly basis.</i>
David Henkin		3.c. Monitoring	Previously discussed under “G” and “P-10” above.
David Henkin	P.12	3.c. Monitoring	Previously discussed under “G” and “P-10” above.
David Henkin	P.13	Stipulation 3.d – There needs to be some report prepared—not clear under Appendix G if there would be a report after fire suppression activities.	PA has been revised under Stipulation 3d(2) which reads: <i>The Garrison will provide round out-of-impact area logs and monitoring reports to SHPO and all consulting parties within 21 days of the monitoring schedule reflected in Stipulation 3d(1). In addition, the Garrison will submit monitoring records, round out-of-impact area logs, fire response activities and photographic documentation in each annual reporting in accordance with Stipulation 10.</i>
David Henkin	P.14	Stipulation 4 – Exempted undertakings—a global comment. Anything that qualifies as an undertaking should require cultural monitoring while the activities are taking place. Cultural monitors have a better sensitivity than trained archaeologists. All of the activities listed have caused damage to properties. There are no examples of tree trimming, but grass-cutting does have the	PA has been revised, see amended Stipulation 4.

		potential to cause damage.	
Multiple	P.15	Stipulation 4.a – concerns regard appropriateness of grass cutting as an exempted undertaking.	Army has identified a requirement to train grass cutters and other maintenance personnel per stipulation 3c(4).
Multiple	P.16	Stipulation 4.b - concerns raised over resurfacing and repaving roads may affect buried sites.	Stipulation 4.b indicates that these types of maintenance and repair activities will be performed with CRM personnel present. Should any sites be exposed during maintenance activities procedures under Stipulation 5: <u>Discoveries</u> , will be followed. New construction would require separate section 106 consultation.
OHA	P.17	Stipulation 4.c – request for map to identify facilities covered under exempted facilities and expressed concerns with the potential to disturb sites during utilities repair.	The PA is amended to include a map(s) in the appendices. If new utilities are to be installed the Army will consult under section 106. Now Stipulation 4.c reads: <i>Maintenance and repair of existing military facilities that are not historically significant, including buildings and parking areas as identified on map, fencing, and emergency repair of water, sewer, telephone, gas and electric utilities (Appendix K).</i>
OHA, David Henkin	P.18	Stipulation 4.d - There was some confusion on the areas containing UXO and the area of potential effect (APE).	The PA has been amended to provide for an expedited review of proposed detonations of UXO in Stipulation 3d(5) as recommended by consulting parties. Additionally, a clause has been added (Stipulation 6) to cover emergency situations, which reads: <u>Emergency Activities</u> . <i>No requirement of this PA shall delay immediate actions required in an emergency to protect health and human safety or avoid substantial loss of building fabric. Reasonable and prudent efforts, in coordination with the CRM, shall be made to avoid or reduce adverse effects to historic properties during the implementation of immediate emergency actions, documented in writing after the fact with documentation submitted to signatories within 30 days as notification of actions taken and included in the PA annual report addressed in Stipulation 10.</i>
David Henkin	P.19	Stipulation 5. Concerned about the	The PA is amended as follows: 2 nd WHEREAS now

		statement on discoveries made during monitoring construction or excavation activities related to training.	<p>reads: <i>WHEREAS, the Garrison has determined that routine training at Makua Military Reservation (MMR), defined in Appendix A of this document, as well as other activities described within Stipulation 3 are undertakings that may have adverse effects upon historic properties.</i></p> <p>The Army anticipates that there might be construction or excavation in association with the placement of new targets.</p> <p>These are covered by Stipulations 3b(2) and 3b(3), which now read: (2) <i>The Garrison, when placing target objectives and training aids in new locations, will ensure avoidance of historic properties. When placing new targets and training aids without ground disturbance, for example portable containers and mockup targets, a cultural resources staff member will accompany the range personnel to ensure avoidance of historic properties. The Garrison will report on these new locations pursuant to Stipulation 10. (3) When placement of new targets requires ground disturbance, Garrison will request an expedited review by consulting parties with a 7 day notification about the location.</i></p>
David Henkin	P.20	Stipulation 6 – Parties concerned that any amendment can be proposed and adopted without consulting parties	The ACHP regulations specify this part as necessary. An amendment can be suggested through one of the signatories.
Everyone	P.21	Stipulation 9 - Consulting parties should receive the annual reports without requesting them.	The PA has been amended to provide report to ACHP SHPO and consulting parties – Stipulation 10.
ACHP, David Henkin	P.22	Stipulation 10 - Under this provision unless the consulting parties can convince one of the signatory parties to object, then there is no opportunity to object or invoke the dispute resolution.	<p>PA amended to read:</p> <p>11. <u><i>Dispute Resolution.</i></u></p> <p><i>Should any signatory or concurring party to this agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, the Garrison shall consult with the</i></p>

			<p><i>objecting party(ies) to resolve the objection. If the Garrison determines, within thirty days, that such objection(s) cannot be resolved, the Garrison shall:</i></p> <p><i>a. Forward all documentation relevant to the dispute, including a recommended resolution, to the ACHP. Upon receipt of this documentation, the ACHP shall review and advise the Garrison on the resolution of the dispute within thirty days from the date of ACHP receipt. Any written comment provided by the ACHP, and all comments from the signatories and concurring parties to the agreement, will be taken into account by the Garrison in reaching a formal decision regarding the dispute.</i></p> <p><i>b. If the ACHP does not provide written comments regarding the dispute within the above thirty-day period, the Garrison may render a decision regarding the dispute. In reaching its decision, the Garrison will take into account all written comments it has received regarding the dispute from any signatory or concurring party.</i></p> <p><i>c. During the pendency of any dispute and prior to the resolution of such dispute, the Garrison shall continue to carry out all actions under this agreement that are not subject to or affected by the dispute. The Garrison will notify all signatories and concurring parties in writing of its decision concerning any dispute processed in accordance with this Stipulation at least ten days before implementing such decision. The Garrison's decision will be final.</i></p> <p><i>This stipulation does not preclude a member of the public from notifying the Garrison of any objection</i></p>
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			<i>and/or dispute they have as to the manner in which this PA is being implemented. The Garrison shall determine whether any action is necessary to respond to the public.</i>
David Henkin, COL Margotta	P.23	Appendix A – In many places it is unclear about the extent of the activity being proposed. Additionally there is editing required and there is missing information.	Army has reviewed and updated Appendix A to reflect the same language as the EIS.
From		Comment	Army Response
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The Programmatic Agreement fails to meet federal and state requirements under recent U.S. Supreme court cases with indigenous peoples concerning historic properties because: (a) it does not include those directly linked to that property (see recent Navaho cases), with the State Historic Preservation Officer (SHPO) and Advisory Council of Historic Preservation (ACHP) being non-representatives of the lineal descendants who have burial sites in both the MMR and the APE (see PA of Army for definitions); (b) it confuses various levels of interested parties in its consultation list and does not distinguish state-recognized Lineal Descendants directly connected to the ownership of Kuleana properties	<p>The USAG-HI recognizes Native Hawaiian organizations and Native Hawaiians as defined by regulation (36 CFR Part 800-16(s)(1 and 2): (1) <i>Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.</i> (2) <i>Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.</i></p> <p>Pursuant to section 106 of the NHPA and its implementing regulations, 36 CFR Part 800, the Army invited Aha Kukaniloko/Koa Mana and other consulting parties to participate in the development of this PA (see Appendix C) and welcomes their participation as concurring parties to this PA. The Army considers all consulting party comments and concerns equally. The Army does not discriminate, or place values or concerns expressed by one consulting party over another. It is the Army's position that the issue of lineal descent and cultural affiliation is not a section 106</p>

			<p>matter, but one related to NAGPRA.</p> <p>It is required by regulation (36 CFR Part 800) to include the SHPO and the ACHP as signatories and in the development of PAs.</p>
<p>Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09</p>		<p>Remedy: Koa Mana must be consulted prior to, during, and after any Army activities that have potential adverse effects in both the so-called MMR and APE areas of Makua Valley. Additionally, the Army should recognize... the kupuka'aina, the original native people and/or Hawaiian Nationals are inextricably intertwined with their TCP, religious, and historic property. Furthermore these laws protect the identity and traditional practices within their cultural definitions as well as geographic associations such as Kanehunamoku, (the Garden of Eden) in Makua. Our ohana family genealogy directly connects to our progenitors, Ki'i and Huanui'ikala'ila'i which originally came forth from the womb of Papa (Kaneana). It is important for the Army to note and recognize that the TCP's, religious and historic properties contain these Ka'anani'au burial rights that tie to Aha Kukaniloko the "Piko" of O'ahu and all the "Ka'anani'au Land Use Codes" of the Hawaiian Nationals.</p>	<p>The purpose of this PA is to document the terms and conditions agreed upon by all signatories to resolve the potential adverse effects of the USAG-HI activities for routine training at MMR in accordance with § 800.14(b), and to do so in consultation with interested Native Hawaiian Organizations, Native Hawaiians and other interested parties. The agency official shall ensure that consultation in the section 106 process provides the Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.</p>
<p>Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09</p>		<p>The Programmatic Agreement fails to meet federal and state requirements adhering to consultation when it mixes all levels of cultural descendants and agencies that work for and against the Lineal Descendants for our family burial sites in Makua Valley. Additionally the Army violates our pre-</p>	<p>The Army recognizes Native Hawaiian organizations and Native Hawaiians as defined by regulation (36CFR800-16(s)(1 and 2): (1) <i>Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in</i></p>

		identified gravesites, temples (Ka'anani'au) and Kane religion.	<p><i>aspects of historic preservation that are significant to Native Hawaiians. (2) Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.</i></p> <p>The Army considers all consulting party comments and concerns equally. The Army does not discriminate or place the values of or concerns stated by one consulting party over another.</p> <p>The Army will continue to consult separately with Koa Mana on new discoveries relating to NAGPRA.</p>
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The Army ignores our State recognition of lineal descendants to family burial sites in U-Kane-po, Ka'anani'au temple. Our ohana Koa Mana will continue to object to the Army's, Laurie Lucking, failure and to disguise the 106 governing requirements to provide the Kuleana land owners and lineal descendants a lawful and earnest 106 cultural resources management plan . The Army should stop and not use Laurie Lucking for any further excuses for Army adverse activities.	<p>The Army will continue to consult separately with Koa Mana on new discoveries relating to NAGPRA.</p> <p>Comment regarding Dr. Lucking considered and dismissed.</p> <p>The Army is in the process of developing an Integrated Cultural Resources Management Plan as required by Army regulation (AR 200-1).</p>
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		Remedy: Koa Mana must be consulted prior, during and after to mitigate and prevent further adverse activities.	<p>The newly revised PA is designed to minimize adverse effects by avoiding historic properties through stipulations 3b(1). In addition, it contains a process for handling discoveries (Stipulation 5) and potential adverse effects, leading in consultation to resolution of adverse effects 3d(3).</p> <p>The PA provides several mechanisms to consult with consulting parties, such as during the identification and evaluation of historic properties and when discoveries are made (see Stipulations 2 and 5).</p>

			<p>Additionally, the Garrison will consult with consulting parties regarding appropriate protection measures for historic properties within the South Firebreak Road: Stipulation 3b(1).</p> <p>When determining the placement of new target objections that requires ground disturbance (see Stipulation 3b(3)).</p> <p>The Garrison will consult with consulting parties on developing training programs for monitors, contractors, and Army personnel (see Stipulation 3b(4)).</p> <p>The Garrison will consult with consulting parties when it is required to detonate UXO near a know historic property (see Stipulation (3d(5))</p>
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		Pre-identification of specific families' burial sites have been repeatedly made to the Army (See notes upon written request on meeting with H. Killian and L. Lucking, dated 10-7-04 and others), the SHPD, the ACHP and OHA also have records and notice of these "historic properties" being significant. We the Koa Mana Ohana keep hoping, praying and objecting to the, obviously made to be broken, Army resources management office. Ethics and responsibilities that are governed by section 106 law and regulations are made impotent, haphazard and dysfunctional to the protection of historic property. Pretending that no pre-identification is not a remedy but a violation of federal and state law ethics and adherence.	The Army believes it has made a good faith effort to identify affiliated groups to burials and will continue to consult separately with Koa Mana on new discoveries relating to NAGPRA.
Aha Kukaniloko/Koa		The PA's terms of compliance and the termination process cannot be in accord with	Pursuant to regulation 36 CFR Part 800, it is the Army's position that only parties " <i>that assumes a responsibility</i> "

Mana Comments dated 10 Mar 09		federal and state requirements because the state-recognized lineal descendants directly connected to the burial sites, Traditional Cultural Property, Historic Properties, Hawaiian Kingdom Kuleana and religious properties noted Kila, Poe, Lenchanko are not signatories to the PA.	will be a signatory to an agreement. However, the Army invites, OHA and other consulting parties to sign as concurring parties in accordance with the regulations.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The PA does not address past adverse effects (2003, Lucking) when family burial sites were desecrated and human remains were disinterred. Past agreements about return of said remains have not occurred within the timeline of those agreements. (H. Killian made agreement with our ohana to return remains that L. Lucking keeps hidden since 2003, agreement remains broken to date.)	The PA is specific to activities associated with routine training and does not need to address past adverse effects, only to address potential future adverse effects. The Army believes the PA lays out a process to avoid potential adverse effects and measures to be taken in the unlikely event an adverse affect occurs. The Army does not have any remains from burial sites. All have been repatriated
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The PA does not have a procedure that prevents massive pre-identified gravesite disturbances, as when bulldozers were used to make two roads and graves sites, war memorials and "Ka'anani'au Land Use Codes" were desecrated. The Army lacks an honest cultural resource management plan for Makua Valley. The Armies history in Waianae, Hawaii is one of short sightedness, destruction and wasted resources.	The PA does not consider road construction a part of routine training and such activities require case-by-case consultation with SHPO and consulting parties. The Army is in the process of developing an Integrated Cultural Resources Management Plan as required by Army regulation (AR 200-1).
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The PA does not address the issue of protecting Hawaiian War Memorials in Makua Valley. The Armies cultural resources manage does not allow the Army or so-called associated public persons any opportunity to discuss and or require cultural resources management plans that important information	The newly revised PA is designed to minimize adverse effects by avoiding known historic properties through stipulations 3b(1). The Army is not aware of any War Memorials at MMR and encourages Koa Mana to disclose their locations to the Army CRM to assist in their protection.

		can be recognized in the Armies proceedings concerning the disposition of Hawaiian Historic Properties.	<p>The PA contains a process for handling discoveries (Stipulation 5) and potential adverse effects, leading in consultation to resolution of adverse effects 3d(3).</p> <p>The PA provides several mechanisms to consult with consulting parties, such as during the identification and evaluation of historic properties and when discoveries are made (see Stipulations 2 and 5).</p> <p>Additionally, the Garrison will consult with consulting parties regarding appropriate protection measures for historic properties within the South Firebreak Road: Stipulation 3b(1).</p> <p>When determining the placement of new target objections that requires ground disturbance (see Stipulation 3b(3)).</p> <p>The Garrison will consult with consulting parties on developing training programs for monitors, contractors, and Army personnel (see Stipulation 3b(4)).</p> <p>The Garrison will consult with consulting parties when it is required to detonate UXO near a know historic property (see Stipulation (3d(5))</p>
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The Army should allow dialog, oral or written, testimony to properly identify Historic Property.	The PA provides mechanisms to consult with consulting parties, such as during the identification and evaluation of historic properties and when discoveries are made (see Stipulations 2 and 5).
Aha Kukaniloko/Koa Mana Comments		The Army does not allow appeals regarding any decisions that may have adverse effects to historic property and or conflicts with 106 requirements which have been routinely	The newly revised PA is designed to minimize adverse effects by avoiding historic properties through stipulations 3b(1). In addition, it contains a process for handling discoveries (Stipulation 5) and potential

<p>dated 10 Mar 09</p>		<p>violated by Lucking.</p>	<p>adverse effects, leading in consultation to resolution of adverse effects 3d(3).</p> <p>Stipulation 10: Dispute Resolution <i>Should any signatory or concurring party to this agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, the Army shall consult with the objecting party(ies) to resolve the objection. If the Army determines, within thirty days, that such objection(s) cannot be resolved, the Army will:</i></p> <p><i>a. Forward all documentation relevant to the dispute, including a recommended resolution, to the ACHP. Upon receipt of this documentation, the ACHP shall review and advise the Army on the resolution of the dispute within thirty days from the date of ACHP receipt. Any written comment provided by the ACHP, and all comments from the signatories and concurring parties to the agreement, will be taken into account by the Army in reaching a formal decision regarding the dispute.</i></p> <p><i>b. If the ACHP does not provide written comments regarding the dispute within the above thirty-day period, the Army may render a decision regarding the dispute. In reaching its decision, the Army will take into account all written comments it has received regarding the dispute from any signatory or concurring party.</i></p> <p><i>c. During the pendency of any dispute and prior to the resolution of such dispute, the Army shall continue to carry out all actions under this agreement that are not subject to or affected by the dispute. The Army will notify all signatories and concurring parties in writing of its decision concerning any dispute processed in</i></p>
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Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		Col. H. Killian made a verbal contract with Lenchanko and Silva on 8-10-06, to expose these issues in an honest, ethical and 106 governed Traditional Cultural Property Study.	USAG-HI conducted a Traditional Cultural Places survey and a Traditional Cultural Impact Assessment study in 2002/3. Aha Kukaniloko/Koa Mana was invited to participate in the study, but the Silva family requested removal of their testimony from the report. The USAG-HI is planning a study of traditional religious and cultural properties in the near future and invites Aha Kukaniloko/Koa Mana to participate in the study.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The Army cannot be responsible to follow its own 106 governance or FM 27-10 beside a smaller responsibility to keep a verbal contract to do a TCP study.	The USAG-HI believes that the PA and stipulations that provide for accountability demonstrate the Army's desire to meet its section 106 responsibility.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		We are concerned about a fair and honorable treatment of our War Memorials and family remains just like you would, if it were your family being treated like ours in Makua. Please note that the Army has illegally seized our Kuleana property, then bulldozed it. This Army resources manager (L. Lucking) is just the front for demeaning the governing of lawful "consultation" and contest this situation.	The Army is not aware of any War Memorials at MMR and encourages Koa Mana to disclose their locations to the Army CRM to assist in their protection.

		The Army's PA is rejected due to its resources manager L. Lucking illegally assisting Hui Malama's - Mr. Jonson, to set up a foreign religion and new altars to the god Lono that have no historical and/or cultural history or setting in Makua Valley—or in the entire Waianae Wahipana.	Cultural access is addressed in the 2001 Settlement Agreement and not in this PA.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		Violating the agreement (8-10-06) for the Army to fund and provide reasonable assistance and access to do complete traditional cultural property studies for all the effected Army occupied so-called "historic property" locations.	USAG-HI conducted a TCP survey in 2002/3. Aha Kukaniloko/Koa Mana was invited to participate in the study, but the Silva family requested removal of their testimony from the report. The USAG-HI is planning an study of traditional religious and cultural properties in the near future and invites Aha Kukaniloko/Koa Mana to participate in the study.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		The Army does not rectify what it did a Kaneana Cave in 1937. None of the human remains and artifacts have been returned to our ohana for proper reinterred as well as repairs to our sacred Kaneana "Ka'anani'au" temple.	Comment is unrelated to the PA and section 106. All human remains within USAG-HI lands have been repatriated.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		<p>Army claims are false regarding:</p> <ul style="list-style-type: none"> a. Army has not complete identification of "historic property," as it claims to on PA dated 2-10-09 pg 1. b. The U.S. Army and its resources manager has no shame, page 1&2 states "subsurface testing and a previous Traditional Cultural Places survey in all areas..." This statement reflects and illustrates the Army's linguistic and reporting strategies, such as asserting that a TCP is a Traditional Culutral Places instead of a traditional cultural property which are two different specificities with 	a and b. The USAG-HI has conducted identification and treatment of historic properties within the APE. These efforts are documented in Appendices. The USAG-HI has conducted pedestrian survey, subsurface testing and a "TCP" survey in all areas <u>that do not present a threat to human health and safety</u> , as documented in an Appendix of the PA. The Army has requested consultation on historic property identification efforts with consulting parties on these surveys as shown in the Appendix. The Army recognizes that the National Historic Preservation Act refers to <i>Traditional religious and cultural properties (TRCPs)</i> as Aha Kukaniloko/Koa Mana Comment being eligible to the National Register of Historic Places; and that the term "Traditional Cultural Property" is referenced in the National Park

		<p>different meanings and protections governed by 106 law.</p> <p>c. C. The Lineal Descendants of the original people of Makua wahipana recommend that the Army keep its verbal contracts and honor our Hawaiian war memorials in an equal and respectful manner of U.S. War memorials.</p>	Service Bulletin 38. The Army will be more careful in how it uses these terms.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		Of the false statement on pg. 2 states "...Garrison, SHPO, and ACHP (signatories) agree that the Garrison's section 106 compliance responsibilities for..." It is disappointing that the Army's leadership allows violations directly to the governing to 06 regulation on "consultation" with associated persons pursuant to FM-27-10 regulating Army conduct in military occupation.	Comment considered and dismissed as FM-27-10 does not relate to the PA. The Army consults in accordance with section 106 of the NHPA and its implementing regulations (36 CFR Part 800).
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		As stated throughout this document of complaint and objections to the U.S. Army as noted herein. Our summary of legal issues and ongoing problems with the U.S. Army remains unresolved, therefore we are asking the U.S. Army to correct these problems violations immediately in your Programmatic Agreement.	The USAG-HI believes comments by Aha Kukaniloko/Koa Mana pertaining directly to the PA are addressed. Other issues unrelated to section 106 and the development of PA may be addressed separately and the Army welcomes meeting with Aha Kukaniloko/Koa Mana to discuss other issues.
Aha Kukaniloko/Koa Mana Comments dated 10 Mar 09		Additional concerns regarding our traditional process of land management centered at Kukaniloko, Piko of all Ka'anani'au land management traditions, should be considered and will be made upon further review, and concerns will be preserved for the proper time. We remain hopeful as always that we are treated fairly and with respect for the proper treatment to our families' remains,	Comment considered – no response necessary

		<p>“our iwi ohana” – and our final draft will be issued by mail to the SHPD and the O-H-A. Respectfully, we ask Monahan and his SHPD associates, complete reconsider their so-called Burial Plan. We will pray each day that the end of illegal activities will soon come to an end. Mahalo no my ohana for your generous kokua, attention and assistance in these matters of great harm to our Hawaiian people and future generation to come. To lako ohana, ua mau ke ea o ka’aina i ka pono.</p>	
OHA			
OHA 12 MAR 09 Ltr		<p>OHA maintains the position that the Department of the Army has failed to engage in meaningful consultation during the development of this draft P A. The concerns expressed by consulting parties relative to this PA have been blatantly ignored and thus, have never been acknowledge or addressed. The <i>"Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act"</i> provide that " ... Consultation is built upon the exchange of ideas, not simply providing information ... " and emphasize that Federal agencies have an obligation to " ... acknowledge others' interests and seek to understand them; develop and consider a full range of options; and try to identify solutions that will leave all parties satisfied. "</p>	<p>The USAG-HI has sent letters and previous drafts of the PA to all consulting parties in accordance with 36 CFR Part 800. The purpose of the face-to-face meeting held on 26 Feb 09 was to engage consulting parties in meaningful discussion of issues they’ve raised previously and on the current draft. The purpose of this summary of comments is to show the Army’s consideration of consulting parties’ comments.</p>
		<p>Furthermore, 36 CFR §800.6(a) provides that in the development of a PA, Federal agencies must continue consultation with consulting parties to " ... develop and evaluate alternatives or modifications to the</p>	<p>The newly revised PA is designed to minimize adverse effects by avoiding historic properties through stipulations 3b(1). In addition, it contains a process for handling discoveries and potential adverse effects, leading in consultation to resolution of adverse effects</p>

		<i>undertaking that could avoid, minimize or mitigate adverse effects on historic properties".</i>	3d(3).
		The "routine training" activities listed in Appendix A of the PA are described in very general terms, making it difficult for consulting parties to assess whether these proposed activities have the potential to adversely impact cultural sites. Stipulation I(a) provides that should any proposed activity within the APE be "greater in magnitude" than those listed in Appendix A, additional consultation pursuant to Section 106 shall occur. It is unclear who will determine whether a proposed activity will be "greater in magnitude" than those listed in Appendix A.	Appendix A has been amended to reflect the routine training activities as defined in the EIS. The new revised PA has been changed to, " <i>Should any activity within the APE be proposed that is not identified in Appendix A, the Garrison shall consult on such undertakings on a case-by-case basis pursuant to Section 106 of the NHPA, as they fall outside the scope of this PA.</i> " Stipulation 1(a).
		OHA will rely on the assurances within Stipulation 2(a) that " ... <i>Until formal evaluations are completed, all archaeological sites within the APE will be treated as eligible for listing in the NRHP</i> ". OHA notes that cultural sites continue to be identified within the APE and strongly advocates that the Department of the Army engage in meaningful consultation with all consulting parties to properly determine the significance of all cultural sites within the APE and appropriate mitigation measures.	The newly revised PA is designed to minimize adverse effects by avoiding historic properties through stipulations 3b(1). In addition, it contains a process for handling discoveries and potential adverse effects, leading in consultation to resolution of adverse effects 3d(3).
		Unexploded ordinance (UXO) should be cleared from the APE to not only facilitate the identification of cultural sites, but also to facilitate access to them, as the Department of the Army has consistently used the issue of UXO to prevent cultural access to certain cultural sites.	The USAG-HI plans to clear UXO in accordance with the 2001 SA conditions.
		The educational effort described within	The Army has amended the PA to read under

		<p>Stipulation 3(b)(3) is a positive step towards providing necessary training for Department of Anny personnel (including contract personnel) of the cultural importance of Makua and the protection of cultural sites and historic properties. OHA believes that this training program should be conducted directly, or in coordination, with cultural practitioners and provided on a regular basis.</p>	<p>Stipulation 3b(4 and 5): (4) <i>Together and within 8 months of the execution of this PA, the Garrison and experts from the community identified by the consulting parties, if available, will update cultural awareness training programs for monitors, contractors and military personnel, which will include: grass cutters, maintenance, range personnel, military personnel, trainers and other parties.</i></p> <p>(5) <i>Based on the training programs developed, the Garrison will educate military personnel, and contractors working on MMR in cultural resource awareness and in the protection and avoidance of historic properties. Instruction includes field trips, classroom training, and printed literature. Senior officers and Range Control personnel will be briefed by the Cultural Resources staff. The Garrison will report on training given during the year pursuant to Stipulation 10.</i></p>
		<p>Stipulation 3(c)(3) provides that monitoring of historic properties within the APE will be done in accordance with Appendix G of the PA and take place on a quarterly basis. The monitoring procedure detailed in Appendix G of the PA provides that damage to cultural sites and historic properties will only be reported to the Hawai'i SHPD to initiate consultation. OHA maintains the position that all consulting parties must be notified of any damage to cultural sites or historic properties within the APE and be provided the opportunity to participate in the consultation process. Furthermore, monitoring should be conducted at the conclusion of every training activity covered by the PA, as monitoring on a quarterly basis appears to be insufficient in assessing the effectiveness of site protection</p>	<p>The Army has amended the PA to read under Stipulation 3d(1) and (2): (1) <i>The Garrison will monitor historic properties within the South Fire Break Road in accordance with Appendix G, Archaeological Site Monitoring Plan. The Monitoring Plan will be carried out by personnel from the Garrison Cultural Resource Program. The monitoring will take place initially every month for the first four months after live fire training commences and then subsequently every two months at appropriate intervals between live fire exercises to assess the effectiveness of the site protection measures and any effects to known or new historic properties. After the first 16 months of live fire training, the Garrison will perform monitoring on a quarterly basis.</i></p> <p>(2) <i>The Garrison will provide round out-of-impact area logs and monitoring reports to SHPO and all consulting parties within 21 days of the monitoring schedule</i></p>

		measures.	<p><i>reflected in Stipulation 3d(1). In addition, the Garrison will submit monitoring records, round out-of-impact area logs, fire response activities and photographic documentation in each annual reporting in accordance with Stipulation 10.</i></p> <p>Stipulation 10 has also been changed to include notification and reports to all consulting parties.</p>
		OHA requests clarification on the definition of " ... areas that present a threat to human health and safety" discussed within Stipulation 3c(3) and requests that these areas and those containing UXO which will not be subject to monitoring be accurately depicted within the APE and provided as an appendix to the PA.	The Army will include a map showing areas known to contain UXO and areas where terrain is dangerous...
		The exempted undertakings discussed within Stipulation 4.a-d need to be clarified, because they appear to be too broad in their scope. The "previously landscaped areas" within Stipulation 4.a and the "previously paved areas" within Stipulation 4.b need to be identified and depicted within the APE.	The Army has amended the PA to clarify the type of undertakings that are intended to be covered, now stipulation 4.a-f. Previously landscaped and paved areas will be identified in an Appendix.
		While above ground maintenance and repair within the existing footprint of existing military facilities does not have the potential to adversely impact historic properties (Stipulation 4.c), any subsurface excavation related to repair of existing water, sewer and utility lines does have the potential to adversely impact cultural resources and should not be an exempted undertaking.	Now Stipulation 4.c: The Army does not consider the "maintenance and repair" of subsurface utilities are likely to cause adverse to historic properties. All existing utilities are generally in the footprint of the paved and main structures covered by the range control headquarters, where no known historic properties exist. The range control area within the hill area is fill area brought in to accommodate potential UXO on the site. The 4 inch waterline was surveyed by the State in the late 1970's.
		OHA requests clarification on what substances which may " ... pose a threat to	Now Stipulation 3d(5)

		<i>human health and safety within the APE</i> are known to exist within the APE (Stipulation 4(d)).	Substances primarily include UXO. The Army at this time does not know specifically what other substances exist at MMR that may pose a threat to human health and safety, such as fuel spills in accordance with the Clean Water Act.
		The detonation or removal of UXO within the APE certainly has the potential to cause an adverse effect to cultural sites and thus, should not be an exempted undertaking. Consultation for the detonation or removal of UXO from within the APE should occur on a case-by-case basis, and 36 CFR §800.12 provides for just such a process in "emergency situations" like these.	The Army has amended the PA to include new language under Stipulations 3d(5): <i>"(5) In the event UXO is identified, the Garrison will either remove or detonate the ordnance in accordance with Stipulation 4.f. if applicable. If unable to remove or detonate UXO in accordance with 4.f. the CRM will notify consulting parties and request an expedited (7 days from notification) consultation to determine the appropriate protection of nearby historic properties prior to the activity. Similarly, the CRM will follow the same notification and consultation procedures if other substances or materials (i.e. fuel spills) that pose a threat to human health and safety are discovered and the removal of such substances will require ground disturbance or have a potential to impact known historic properties."</i>
		Stipulation 5 addresses the discovery of historic properties and cultural sites during any <i>"... construction or excavation activity related to routine training within the APE"</i> . Since there are no construction or excavation activities listed within Appendix A of the PA, OHA requests clarification on what activities the Department of the Army anticipates will involve construction or excavation activities within the APE.	The Army anticipates that there might be construction or excavation in association with the placement of new targets. These are covered by Stipulations 3b(2) and 3b(3): <i>(2) The Garrison, when placing target objectives and training aids in new locations, will ensure avoidance of historic properties. When placing new targets and training aids without ground disturbance, for example portable containers and mockup targets, a cultural resources staff member will accompany the range personnel to ensure avoidance of historic properties. The Garrison will report on these new locations pursuant to Stipulation 10. (3) When placement of new targets requires ground disturbance, the Garrison will request an expedited review by consulting parties with a 7 day notification</i>

			<i>about the location.</i>
		Stipulation 9 proposes that only the SHPO will receive annual reports from the Department of the Army with all other consulting parties able to receive the reports upon request. OHA believes all consulting parties should receive annual reports from the Department of the Army without having to request them.	The Army has amended the PA with new language now under Stipulation 10 that reads: <i>"The Garrison will provide an annual status report to the SHPO and consulting parties. The report will be provided to the ACHP upon request. The report will detail the actions the Garrison has undertaken to fulfill the requirements of this PA including those actions covered under exempt activities in Stipulation 4."</i>
		As it is currently written (See Stipulation 10), only a signatory can object to any plans or activities pursuant to the PA and initiate the dispute resolution stipulation. OHA advocates that both signatories and concurring parties should have the ability to raise objections.	<p>The Army has amended the PA with new language now under Stipulation 11 that reads: <u><i>Dispute Resolution</i></u>. <i>Should any signatory or concurring party to this agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, the Garrison shall consult with the objecting party(ies) to resolve the objection. If the Garrison determines, within thirty days, that such objection(s) cannot be resolved, the Garrison shall:</i></p> <p><i>a. Forward all documentation relevant to the dispute, including a recommended resolution, to the ACHP. Upon receipt of this documentation, the ACHP shall review and advise the Garrison on the resolution of the dispute within thirty days from the date of ACHP receipt. Any written comment provided by the ACHP, and all comments from the signatories and concurring parties to the agreement, will be taken into account by the Garrison in reaching a formal decision regarding the dispute.</i></p> <p><i>b. If the ACHP does not provide written comments regarding the dispute within the above thirty-day period, the Garrison may render a decision regarding the dispute. In reaching its decision, the Garrison will take into account all written comments it has received regarding the dispute from any signatory or concurring</i></p>

			<p>party.</p> <p><i>c. During the pendency of any dispute and prior to the resolution of such dispute, the Garrison shall continue to carry out all actions under this agreement that are not subject to or affected by the dispute. The Garrison will notify all signatories and concurring parties in writing of its decision concerning any dispute processed in accordance with this Stipulation at least ten days before implementing such decision. The Garrison's decision will be final.</i></p> <p><i>This stipulation does not preclude a member of the public from notifying the Garrison of any objection and/or dispute they have as to the manner in which this PA is being implemented. The Garrison shall determine whether any action is necessary to respond to the public.</i></p>
		Also, the OHA Board of Trustees has established a policy to request signatory status on all "program alternatives" developed pursuant to 36 CFR §800.14. ...Thus, OHA formally requests invited signatory status on the subject PA.	Pursuant to regulation 36 CFR Part 800, it is the Army's position that only parties " <i>that assumes a responsibility</i> " will be a signatory to an agreement. However, the Army invites, OHA and other consulting parties to sign as concurring parties in accordance with the regulations.
		OHA believes that an appropriate course of action is to have another face-to-face meeting between consulting parties and the Department of the Army when the next draft of the PA is completed.	The Army believes it has sufficient information to take into account the magnitude of the undertaking and the nature of its effects on historic properties. The Army believes it has consulted in good faith and considered the views of the consulting parties and made a reasonable and good faith effort to accommodate and incorporate comments within operational constraints.